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No. 07-1198

In the Supreme Court of the United States

FRANCIS SPLITTORFF
Petitioner,

v.

JERRY AIGNER, ET AL.
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS

RESPONDENT WARRICK COUNTY'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioner Francis W. Splittorff's right to due process and equal protection under the United States Constitution was violated by the Indiana Court of Appeals' holding that he failed to timely challenge the tax sale of his property.

II. Whether the notice provided to Petitioner Francis W. Splittorff prior to the issuance of a tax deed was sufficient to satisfy his Fourteenth Amendment due process rights.

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Pursuant to United States Supreme Court Rule 15, respondent Warrick County, Indiana, hereby submits this brief in opposition to the Petition for a Writ of Certiorari.

JURISDICTION

Respondent Warrick County (hereinafter "Warrick County") disagrees with Petitioner Francis W. Splittorff's (hereinafter "Splittorff") statement on jurisdiction.

The Indiana Court of Appeals ruled that Splittorff's challenge to the sale of his property was not timely filed pursuant to Indiana Trial Rule 60(B). Because of the untimeliness of Splittorff's challenge, the Court did not address any of the other issues raised in Splittorff's brief. As the Indiana Court of Appeals decided this case solely on independent and adequate state law grounds, this Court lacks jurisdiction. See *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

Splittorff alleges in his Petition for a Writ of Certiorari (hereinafter "Petition") that Indiana's statutory notice and hearing procedure for tax sales violates the due process clause of the United States Constitution. Before the Indiana Court of Appeals, Splittorff made vague reference to "due process," but he failed to ever reference the due process clause of the United States Constitution. The first mention of the United States Constitution before the Indiana appellate courts came in Splittorff's Petition to Transfer filed with the Indiana Supreme Court. The Petition to Transfer was denied. As Splittorff's federal constitution claim was neither presented to nor addressed by the Indiana Court of Appeals, review of this issue is precluded. See *Howell v. Mississippi*, 543 U.S. 440, 443-444 (2005).

STATEMENT OF THE CASE

Warrick County does not believe Splittorff has fully and accurately apprised this Court of the facts of this case in his Petition. The Indiana Court of Appeals accurately and succinctly stated the facts of this case as follows:

In the mid-1980's Splittorff agreed to purchase a parcel of property on Jenner Road in Chandler from Lois Brooks on contract. Splittorff did not receive the tax bills for 1999, 2000, or 2001, which were mailed to Brooks in Missouri, the record titleholder of the property. On August 7, 2000, Splittorff filed out an "Address Correction Request" listing Brooks as the name on the property record and indicating that the correct addressee was Splittorff or Brooks and that the correct address was the Jenner Road address. The form included a line for the "Owners Signature," which was left blank. That same day, Splittorff redeemed the property from a 1999 tax sale by paying $624.50.

On May 21, 2001, a general warranty deed, issued on May 17, 2001, from Brooks to Splittorff was recorded. On August 15, 2001, a letter postmarked July 27, 2001, and sent via certified mail from the County Auditor's office to the Jenner Road address was returned as "unclaimed." On August 31, 2001, an application for judgment and order of sale was filed with the trial court, and on September 18, 2001, it issued a judgment and order of sale. On September 26, 2001, the Aigners purchased the property in a tax sale. On June 25, 2002, the Aigners sent to Splittorff at the Jenner Road Address, via certified mail, a notice of sale and expiration of redemption period. This noticed indicated that the redemption period expired on September 27, 2002, and that a petition for tax deed would be filed on or after that date. On

> August 27, 2002, the Aigners petitioned for a tax deed, and notice of such was again sent to Splittorff. The trial court set the matter for a hearing on October 1, 2002, and issued a notice of the hearing to Splittorff. On October 1, 2002, and December 4, 2002, the trial court issued orders for tax deed. The actual deed was issued on October 8, 2002, and was recorded on September 19, 2003.
>
> On December 4, 2003, the Aigners filed a complaint to quiet title in their property, naming Splittorff and the County as defendants. On January 28, 2004, Splittorff filed an answer, affirmative defenses, a counterclaim, and a crossclaim. In response to Splittorff's crossclaim, the County filed a partial motion for summary judgment. Splittorff then filed an amended crossclaim, which the County answered. Splittorff responded to the County's partial motion for summary judgment. The County replied and eventually filed a second motion for summary judgment on Splittorff's amended crossclaim. On March 2, 2006 Splittorff again responded and moved for summary judgment. The County replied. On March 22, 2006, the Aigners filed a motion for summary judgment. After a hearing on all of the pending motions, the trial court granted the County's and the Aigners' motions for summary judgment. Splittorff now appeals.

Splittorff v. Aigner, No. 63C01-0606-CV-254, 3-5 (Internal citations and footnotes omitted.).

REASONS FOR DENYING THE PETITION

Splittorff has presented no compelling reasons why his Petition for a Writ of Certiorari should be granted. The Indiana Court of Appeals carefully considered and unanimously rejected Splittorff's challenge to the tax sale of his property on the grounds that Splittorff failed to timely challenge the sale under Indiana Trial Rule 60(B). Furthermore, the court's decision does not conflict with any precedent of this Court, nor is there a conflict between or among opinions rendered by the United States Courts of Appeal. Accordingly, the Petition should be denied.

A. The Indiana Court of Appeals' determination that Splittorff did not timely challenge the tax sale of his property does not violate due process or equal protection.

In his Petition, Splittorff alleges the Indiana Court of Appeals held that he was "strictly limit[ed]" to a 60 day window to challenge the tax sale of the property. Pet. 24. Splittorff's characterization of the holding of the Indiana Court of Appeals is inaccurate.

Splittorff first challenged the issuance of the tax deed by filing a counterclaim and cross-claim to the complaint to quiet title in the property filed by Jerry and Pam Aigner (hereinafter "the Aigners"). At no point did Splittorff file or attempt to file an action pursuant to Indiana Code (I.C.) 6-1.1-25-4.6, the tax sale statute referenced in Splittorff's Petition, or Indiana Trial Rule 60(B), which authorizes motions for relief from judgments or orders. Although Splittorff failed to file a motion pursuant to Trial Rule 60(B), the

court, for argument's sake, considered his counterclaim and cross-claim as such.

Contrary to Splitorff's claim, the Indiana Court of Appeals did not hold that Splittorff was "strictly limit[ed]" to challenging the issuance of a tax deed by the 60 day time frame set forth in I.C. 6-1.1-25-4.6. Instead, the Court of Appeals determined that Splittorff could have filed a motion pursuant to Trial Rule 60(B) within a reasonable time. The Court of Appeals went on to find that based on the facts of this case—including the fact that Splittorff signed for certified mail containing a "Notice of Sale and Expiration of Period of Redemption" in June 2002—it was not reasonable for Splittorff to wait until 2004 to challenge the 2002 tax deed.

Splittorff's argument before this Court is that limiting him to a 60 day window to challenge the issuance of a tax deed constitutes a violation of his rights to due process and equal protection. As noted above, this is not the holding of the Indiana Court of Appeals. Splittorff has not alleged that Indiana's requirement that he challenge the issuance of a tax deed within "a reasonable time" constitutes a constitutional violation and Warrick County is unaware of any reason why such a requirement violates any provision of the United States Constitution.

To the extent that Splittorff alleges in his Petition that the Indiana Court of Appeals found that he "waived" his constitutional rights, he is yet again misinforming this Court of the Indiana Court of Appeals' holding. Nowhere in its opinion does the

Indiana Court of Appeals make such a finding. After reviewing the contents of Splittorff's argument, it appears he is challenging the Indiana court's finding that he did not timely challenge the issuance of the tax deed. That issue is addressed above and does not need to be reiterated.

For the above-stated reasons, this Court should deny Splittorff's Petition.

B. The notice provided to Splittorff in this case was sufficient to satisfy the due process requirements of the Fourteenth Amendment to the United States Constitution.

Before addressing the merits of Splittorff's claim, Warrick County would be remiss if it did not point out various misstatements in Splittorff's Petition related to the opinion of the Indiana Court of Appeals. First, Splittorff alleges that the Indiana Court of Appeals "adopted" Warrick County's argument that Splittorff's familiarity with the tax sale process rendered notice deficiencies irrelevant. Pet. 16. Splittorff also claims "[i]t is also apparent that one basis for the court's opinion was a belief...that Splittorff should have done more to save his property from tax sale." Pet. 17. This is simply not the case. As was noted above, the Indiana Court of Appeals did not address the merits of Splittorff's argument that the notice provisions in Indiana's Tax Sale Statute are unconstitutional as it found that Splittorff's challenge to the sale was not timely. Thus Splittorff's multiple assertions that the Indiana Court of Appeals made findings as to the merits of his notice argument are incorrect.

Turning to the merits of Splittorff's claim, no due process violation occurred. In *Jones v. Flowers*, 547 U.S. 200 (2006), this Court determined that when notice of a tax sale sent via certified mail is returned unclaimed, the state is required to take additional reasonable steps to attempt to give notice to a property owner prior to selling the property, if practicable to do so. In this case, Splittorff was initially sent notice of the tax sale by certified mail, with said notice being returned as unclaimed on August 15, 2001. On June 25, 2002, Splittorff signed for certified mail containing a "Notice of Sale and Expiration of Period of Redemption." This notice informed Splittorff that the redemption period would expire on September 27, 2002, and a petition for tax deed would be filed on or after that date. Splittorff made no attempt to redeem the property. On August 27, 2002, the Aigners petitioned for a tax deed and notice of said petition was sent to Splittorff. A hearing was set for October 1, 2002, and notice of that hearing was also sent to Splittorff. Despite these multiple notices, Splittorff did nothing to redeem his property or otherwise protect his rights. Instead, after the tax deed was issued to the Aigners on October 8, 2002, Splittorff refused to vacate the premises, thus forcing the Aigners to file an action to quiet title on December 4, 2003. It was only then that Splitorff acted, filing both a counterclaim against the Aigners and a cross-claim against Warrick County on January 28, 2004.

The requirements of due process were more than satisfied in this case. Prior to the issuance of the tax deed, multiple reasonable steps were employed to attempt to give Splittorff notice of the sale and issuance of the tax deed. In fact, these reasonable

steps were successful as Splittorff had actual notice after the issuance of the tax deed. Accordingly, due process has been satisfied. See, e.g., *Baker v. Latham Sparrowbush Assocs.*, 72 F.3d 246, 254 (2nd Cir. 1995) ("If a party receives actual notice that apprises it of the pendency of the action and afford an opportunity to respond, the due process clause is not offended.")

In sum, the notice given to Splittorff in this case satisfies the requirements of due process as set forth in *Jones v. Flowers*, 547 U.S. 200 (2006). Thus Splittorff's Petition is without merit and should be denied.

CONCLUSION

For the foregoing reasons, Warrick County respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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